In a case similar to the instant case where property was leased for occupation as a bar and not otherwise, the lessee was released from liability upon the passage of a prohibition law. *Greil Bros. Co.* v. *Mabson,* 179 Ala. 444, 60 South. 876. *A fortiori,* when the lessee reserves the right to terminate the lease in case he is unable to procure a liquor license, he is not liable for breach of covenant. *Fred Miller Brewing Co.* v. *Fleming* (Tex.), 143 S. W. 300; *Wertheimer* v. *Citizen's Bank Building,* 117 Ark. 50, 173 S. W. 841. Likewise when the property was leased for saloon purposes only, but the lessor after executing the lease gave his permission to use the premises for a bootblack and cigar stand, a prohibitory liquor law was held to terminate the lease. *The Stratford, Inc.* v. *Seattle Brewing, etc, Co.* (Wash.), 162 Pac. 31, L. R. A. 1917C, 931.

TELEGRAPHS AND TELEPHONES—INJURY FROM TELEPHONE—MEASURE OF CARE.—The plaintiff, for whose use a telephone had been installed in a store, was injured while using the telephone by lightning conducted over the telephone wires. *Held,* that the telephone company is liable for its failure to exercise the highest degree of care practicable under the circumstances. *Warren* v. *Missouri & Kansas Telephone Co.* (Mo.), 196 S. W. 1030.

The general rule, by which the liability of those employing electricity is determined, is that the care of prudent business men under the circumstances must be exercised, or they will be liable. *Griffith* v. *New England Tel. Co.,* 72 Vt. 441, 48 Atl. 643, 52 L. R. A. 919; *Southern Bell Tel. Co.* v. *McTyer,* 137 Ala. 601, 34 South. 1020, 97 Am. St. Rep. 62. Other authorities require the exercise of the highest degree of practicable care. *Davenport* v. *King Electric Co.,* 242 Mo. 111, 145 S. W. 454; *Will* v. *Edison, etc., Co.,* 200 Pa. St. 540, 50 Atl. 161. And although telephone companies employ a low voltage, not dangerous in itself, it is as much the duty of the company to prevent a dangerous current from a high voltage wire from coming in contact with its own wires, as to send only a harmless current. *Delahunt* v. *United Tel. Co.,* 215 Pa. 241, 64 Atl. 515.

Likewise, the danger from lightning being conducted along the wires is very great, and the general rule is that the proper degree of care has only been exercised, when the company has placed and maintained such known and approved appliances as were reasonably necessary. *Griffith* v. *New England Tel. Co., supra; Southern Bell Tel. Co.* v. *McTyer, supra.* So where the company failed to put in a ground wire, or used a defective appliance, it was liable. *Southwestern Tel. Co.* v. *Abeles,* 94 Ark. 254, 126 S. W. 724; *Southwestern Tel. Co.* v. *Evans,* 54 Tex. Civ. App. 63, 116 S. W. 418; *Griffith* v. *New England Tel. Co., supra.* But since lightning is not within the control of the telephone company, and cannot absolutely be guarded against, the company is not an insurer, but is only liable for its failure to use proper appliances to minimize the danger. *Brucker* v. *Gainesboro Tel. Co.,* 125 Ky. 92, 100 S. W. 240; *Southern Bell Tel. Co.* v. *McTyer, supra.*

Since the telephone company is the servant of the public generally, the use and maintenance of wires is justified, even though danger from

lightning and electric currents is thereby increased. *Southern Bell Tel. Co.* v. *McTyer, supra.* And, for this reason, it has been held that if a line out of service is left with the ends of the wires loose in a house the company is liable for any resulting injury. *Southern Bell Tel. Co.* v. *McTyer, supra.* But where an unused line broke and fell across a trolley wire, the company was held not liable, since this could not reasonably have been prevented. *Strack* v. *Missouri & K. Tel. Co.*, 216 Mo. 601, 116 S. W. 526.

The doctrine of *res ipsa loquitur* applies, where it is shown that the accident was one which would not occur if the company were not negligent. *Delahunt* v. *United Tel. Co., supra.* But, if the plaintiff goes ahead and shows that the accident is due to lightning, the doctrine does not apply. *Rocap* v. *Bell Tel. Co.*, 230 Pa. 597, 79 Atl. 769, 36 L. R. A. (N. S.) 279. This doctrine was applied in the principal case, and the plaintiff recovered, even though some evidence was introduced by the defendant, showing no lack of care on its part.